

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 923 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARESH SHANTILAL PANDYA

Versus

KANTABEN GHANSHYAMBHAI BHATT

Appearance:

MR GM JOSHI for Petitioner

MR SHAKEEL A QURESHI for Respondent No. 1

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 12/08/97

ORAL JUDGEMENT

Rule. Mr. Shakeel A.Qureshi, Ld. Advocate appearing for the respondents waives service of Rule.

A short question that arises in the present

petition is about recalling the applicant and cross-examine her as per the application exh.28 filed by the Ld. Advocate for the petitioner herein. It appears from the evidence recorded at exh.15 in Civil Misc. Application No. 559/95 on the file of the Ld. Civil Judge (S.D.), Rajkot that on calling Ld. Advocate Mr. M.R.Vora, for one of the parties objecting the application, he was not present. However, it is not shown that Mr. S.P.Kamdar, Ld. Advocate for other party who objected the said application, was called and was not available. In fact, the application dated 27.6.1997 given on the next day of recording of the aforesaid evidence at exh.15 was granted by the Ld. Trial Judge. He requested the court in the said application that he was not available on the day on which evidence of the applicant was recorded i.e. on 26.6.1997 and hence he should be given an opportunity to cross-examine the applicant. The said application was granted.

In view of this position on record, it appears that there is omission in considering material aspect of the record and in that eventuality, the Ld. Judge has committed an error of jurisdiction in not allowing the Ld. Advocate to cross-examine the applicant. The order passed below application exh.28 is, therefore, liable to be quashed.

In the result, application succeeds and is allowed. The order passed below application exh.28 in Civil Misc. Application No.559/95 on the file of the Ld. Civil Judge (S.D.) Rajkot is quashed. The said application exh.28 is hereby granted. Ld. Trial Judge shall allow the Ld. Advocate for the party objecting to the application to cross-examine the applicant and will proceed with the hearing of the application in accordance

with law. Rule is accordingly made absolute with no order as to costs.

DIRECT SERVICE permitted.

12.8.1997 [D.G.KARIA, J]

cra92397jrawal.